

### REMARKS

Claims 61-125 were previously pending in this application. Claims 61-63, 69, 71, 72, 75, 76, 79, 88, 92, 93, 96, 97, 99 106-109, 113 and 117-120 have been amended. As a result, claims 61-125 are pending for examination with claims 61, 88, 106, 113, and 120 being independent claims. No new matter has been added.

Certain of the amendments are to make clear that the claim covers activity by a single central entity. Thus, for example, claim 60 includes this amendment: “providing for collecting collection of” to make clear that the limitation may be met by a central agency that arranges to receive the data.

### Examiner Interview

Applicant wishes to thank Examiner Chang and Abdi for the courtesies extended to Applicant's Representative during the Interview of December 18, 2008. During the course of the Interview, Examiners and Applicant's Representative discussed the outstanding rejection of the claims over the cited references (U.S. Patent No. 6,434,533, hereinafter “Fitzgerald” and U.S. Patent No. 4,023,013, hereinafter “Kinker”), the teachings of the application, and discussed how the claims distinguish over the cited reference. In particular, Applicant's Representative discussed how the cited references do not teach the concept of maintaining confidential identifying information of a company, by the company, while still providing nonconfidential information to a central exchange.

Applicant's Representative discussed example systems that employ conventional methods; these conventional systems provide both confidential and non-confidential information to a central system which abstracts the data centrally to generate reports (one example system includes submission by a law firm of both confidential and non confidential information to a third party, the third party processes *all of the data* to generate non confidential reports that it supplies to its clients). Applicant's Representative discussed how certain companies are not comfortable with the loss of control over the company's confidential information. This discomfort makes current systems not widely used by those companies. By putting the private company in control of their own confidential information and by retaining control at the company, one aspect of the present invention addresses this problem.

Transmitting only non-confidential information to the central system means that a participating company does not pass control to a third party over its confidential information. This is a fundamental difference over the cited references and the examples discussed, as both rely on receiving confidential information from participants, even if they later only provide non-confidential reports. (Fitzgerald goes one step further, not only does it receive confidential information, Fitzgerald actually *provides* confidential information to participants). (See e.g. Fig. 8 “Market Fair Share Report”).

Applicant’s Representative and Examiners also discussed the §101 rejections in the Office Action under In re Comiskey and how In re Bilski now provides the test against which to measure compliance with §101. Applicant’s Representative and Examiners discussed submitting amendments to the claim that would clearly identify collection of confidential information proceeding at a user location, and not at the central location, and second, recite a tie to a particular machine and the transformation of data representative of a private company.

Although agreement was not reached, the Examiners agreed in principal that control of confidential information at user location(s) and release of non-confidential information by the user may distinguish over the art of record, but consideration would be necessary upon submission. Accordingly, Applicant submits herein amendments to the claims and the following Remarks for consideration. In light of the amendments and remarks, Applicant respectfully requests reconsideration and allowance of the pending claims.

#### Rejection under 35 U.S.C. §101

The Office Action rejected claim 61 under 35 U.S.C. §101, as being directed to non-statutory subject matter. In re Bilski, was recently decided, and establishes that patentable subject matter will be found where either a process is 1) tied to a particular machine or apparatus, or 2) it transforms a particular article into a different state or thing. Applicant submits that Claim 61, as amended, satisfies both prongs of the test.

Claim 61, as amended, recites a computerized method for trading information related to commercial companies via a network. The method comprises providing for the collection of private company information from a first user location through a user interface on a computer system at the first location, the private company information having a confidential data portion, which includes confidential identifying information for a private company that corresponds with

the private company information, providing for generation of an exchange data portion from the private company information at the first user location, which is characterized by an absence of confidential identifying information for the private company. The amendments that recite “providing for ...” have been submitted to clearly describe operations performed at a user location that is separate from the central location. These operations are tied to specific apparatus, namely, computer systems and user interfaces. Moreover, the data being collected and generated is representative of physical objects/articles – a company and its assets – just as x-ray data was representative of physical object/articles in In re Bilski.

The method further recites the acts of receiving only the exchange data portion at a central computer system at a central location via a computer network, defining an exchange data set at the central location on the central computer system, updating, by a processor, the exchange data set using the exchange data portion, and determining, by a processor, an output data set from the exchange data set, transmitting the output data set from the central location to a user at the first location via the computer network, wherein the private company is part of a commercial industry, and the output data set includes statistical averages for the commercial industry.

Again, the amendments have been submitted to clearly separate operations between user location(s) and a central location which “receive[es] only the exchange data portion at a central computer system at a central location via a computer network” and to tie the acts to a specific article, namely, a computer system at the central location and its corresponding communication hardware.

The Office Action asserts that “claim 61 can be carried out by mental steps and does not link to any of patentable statutory class.” (Office Action, page 3). Claim 61, as amended, recites the “receiving” and “transmission” of data (exchange data, output data, as examples) over a “computer network.” Applicant respectfully submits that, as amended, the claim cannot be reasonably read to cover receiving or transmitting data using only mental steps, thus the claim cannot be seeking to cover “use of human intelligence in and of itself”. (Office Action, page 3). Indeed, the use of the computer network in claim 61 ties the claim to a particular apparatus, as well as the acts of defining on a central computer system and the updating and determining steps performed by a processor, all of which satisfy the first prong of the Bilski test. Moreover, the data being transformed in claim 61, is representative of physical articles and/or objects - that is a company and its assets - just as the x-ray data (representative of a physical object) was

transformed and determined patentable, as discussed in In re Bilski. Thus claim 61, as amended, satisfies the second prong of the Bilski test.

Accordingly, withdrawal of the rejection of claim 61 under 35 U.S.C. §101, is respectfully requested.

#### Prima Facia Showing of Obviousness

With respect to the dependent claims 62-68, 70, 73-87, 89-105, 107-112, and 114-119, and independent claim 120, the Office Action recites that “Fitzgerald in view of Read discloses the claimed method ...” in establishing a prima facie showing of obviousness of the recited claims. (Office Action, p. 5-18). The Office Action dismissed Applicant’s arguments with respect to the combination of Fitzgerald and Read as moot. (Office Action, p. 2 para. 5). Applicant believes the reference to Read to be a typographical error. Applicant believes these rejections were intended to be directed to Fitzgerald in view of Kinker. If Applicant is in error, Applicant respectfully request the Examiner explain the rejection and/or respond to Applicant’s argument provided in the Amendment submitted July 25, 2008.

#### Rejections Under 35 U.S.C. §103

The Office Action rejected claims 61-125 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,434,533, to Fitzgerald (hereinafter Fitzgerald) in view of Kinker. Applicant respectfully submits the following remarks in response, traversing the rejection.

In some regards, Fitzgerald is like the systems discussed in the interview, where a law firm (for example) sends all its data (including confidential identifying data) to a central location which then processes the data and generates a report. As a result, the present claims plainly distinguish Fitzgerald because Fitzgerald teaches providing information *that includes confidential identifying information*. In fact, Fitzgerald is even farther from the claimed invention. Fitzgerald not only collects confidential identifying information at its central location, it relies on that confidential identifying information, as discussed in greater detail below. Further, Fitzgerald provides confidential identifying information to its subscribers. (See e.g. Fig. 8 “Market Fair Share Report”).

In summary, Fitzgerald is directed to determining pricing information for time dependent inventories (e.g. hotel rooms, rental cars, plane tickets), and not only receives confidential

information (including confidential identifying information) at its report center, but also provides confidential information to customers requesting it. (Please see e.g. Col. 4, lines 63-67 and Fig. 8). The Office Action recognizes this deficiency in Fitzgerald, indicating that Fitzgerald fails to disclose, teach or suggest “wherein the private company information includes a confidential data portion ... and the exchange data portion is characterized by an absence of confidential identifying information for the private company.” (Office Action p. 4-5). The Office Action asserts that Kinker cures this deficiency. (Office Action, p. 5). Applicant respectfully disagrees.

First, Kinker *actually teaches the transmission of the confidential identifying information*. Kinker is directed to a method for verifying a holder of an identification card is authorized in an on-line banking system including a central computer. (Abstract). Secret data are keyboard-entered at the terminal by the customer, and the data are converted into a digital signal. (Col. 2, lines 54-56). The [secret] digital signal is then split up into a first and second signal portions. (Col. 2, lines 56-57). The first signal portion of the secret data is compared with the translated portion of the account data signal. (Col. 2, lines 57-59). The second signal portion, along with keyboard-entered transaction data and account number data is transmitted to the central computer along communication lines. (Col. 2, lines 60-63; see also Col 4, lines 4-8).

Thus, Kinker is directed to separating secret authorization data entered by an account holder into two pieces for a local verification and a remote verification. Kinker teaches explicitly transmitting confidential identifying information to a central location (i.e. the second secret data portion *and* customer identifying information - account number data, and keyboard entered transaction data). (See Col. 2, lines 54- 64; Col. 4, lines 2-8; and Abstract). Thus, Kinker cannot teach or suggest “transmitting only the exchange data portion to a central location (Column 9, lines 18-20) via the network (Kinker, See at least Column 2, lines 54+),” as is asserted in the Office Action. (Office Action, p 5). As Kinker does not teach this element, as asserted, Kinker alone or in combination with Fitzgerald cannot teach or suggest “receiving only the exchange data portion at a central computer system at a central location via a computer network,” as is recited in claim 61, as amended. In fact, Kinker explicitly teaches the opposite.

Second, Fitzgerald teaches away from the proposed combination. As discussed above, Fitzgerald teaches the submission of confidential identifying information to its report center. (Please see e.g. Col. 3, lines 46-47; and Col. 4, lines 63-67 and Fig. 8). Fitzgerald teaches that it was an industry standard to include confidential identifying company information not only to the

report center but to customers as well. (Please see Col. 4, lines 63-67 and Fig. 8). Second, the proposed modification of Fitzgerald would require Fitzgerald to receive only non-confidential identifying information. This modification would render Fitzgerald inoperable. Fitzgerald *relies* on confidential identifying information to generate its reports. For example, the “industry-standard” “Market Fair Share Report” generated from the central report center and provided to users of Fitzgerald’s system includes confidential identifying information. (Please see Col. 10 lines 28-31; Fig. 8; and see also Fig. 9A-B (including confidential identifying information)). Without confidential identifying information, Fitzgerald would not be able to identify “businesses in a market area” for exchange of daily performance data – a stated objective of the invention. (Please see Col. 3, lines 14-18). Therefore, the combination of Fitzgerald with *any reference* (including what is alleged to be well-known) that teaches transmitting only the exchange data portion to its report center would be improper.

Third, the combination of Fitzgerald and Kinker does not teach the claimed invention as is asserted in the Office Action. In particular, the Office Action alleges that Kinker teaches “transmitting only the exchange data portion to a central location (Column 9, lines 18-20) via the network (Kinker, See at least Column 2, lines 54+).” (Office Action, p 5). The exchange portion, however, includes the confidential identifying information as well and so any combination cannot result in the claimed invention.

As Fitzgerald teaches away from, and would be rendered inoperable by the modification asserted, the proposed combination is improper. Further, even assumed proper for the purposes of argument, the combination of Fitzgerald and Kinker does not teach the claimed invention as is asserted in the Office Action. Kinker explicitly teaches transmitting confidential identifying information to a central location. Accordingly, withdrawal of this rejection is respectfully requested. As claims 62-87 and 121 depend from claim 61, they are allowable for at least the same reasons

### Well-Known

The Office Action alleges that “the concept of dividing the data structure into two portions (public and non public) is very well known in the computer art,” with respect to independent claims 61, 88, 106, 113, and 120. (See e.g. Office Action, p. 5). Applicant respectfully submits that even if assumed true, the allegation of what is well-known does not

cure the deficiencies of Fitzgerald recognized in the Office Action. (Please see e.g. Office Action, p. 4-5)

In the context of Fitzgerald, the division of the data would occur at the report center, thus the customer would still be required to submit confidential identifying information and Fitzgerald combined with what is well-known would not teach or suggest “receiving only the exchange data portion at a central computer system at a central location via a computer network,” as recited in claim 61, as amended. Even if one were to assume, the customer divided the data, the customers of Fitzgerald would still provide both portions of the information to the report center of Fitzgerald. As discussed above, Fitzgerald relies on confidential identifying information to satisfy its stated objectives.

The Office Action relies on Kinker to support its allegations of well-known. However, Kinker does not support the assertion of well-known. Rather, Kinker teaches separating secret data into two secret portions, and not “secret data” and “exchangeable data” as asserted. (Office Action, p. 5). This is done as an added security measure for banking data, all of which is meant to be secret. None of the data described in Kinker is directed to “exchangeable data” as asserted. No one of skill in the art would expect a banking customer’s information to be made public or be exchangeable to other customers during the course of a transaction.

As Kinker does not evidence the “concept of dividing the data structure into two portions (public and nonpublic)” is well-known, as asserted, Applicant respectfully requests that the Examiner provide a reference teaching what is alleged to be well-known or withdraw the allegation. (Please see MPEP §2144.03).

#### Independent Claim 88

Claim 88, as amended, recites a network business method for providing commercial statistical data via a network. The method comprises the steps of providing for collection of commercial data information via a webpage displayed on a computer at a first user location, wherein the commercial data information relates to a private company in an industry, providing for generation of a commercial data record from the commercial data information, including a confidential subrecord that identifies the private company, providing for generation of an exchange subrecord from the commercial data information at the first user location, which is characterized by an absence of confidential identifying information for the private company,

defining a commercial statistical analysis system having an exchange data set on a computer system at a central location, receiving only the exchange subrecord via a computer network communication link to the commercial statistical analysis system, updating, by the computer system, the exchange data set using the exchange subrecord, generating a commercial statistical data set for the industry using the commercial statistical analysis system on the computer system, wherein the commercial statistical data set includes statistical averages for the industry, and transmitting the commercial statistical data set to the user location over a computer communication network, wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.

The Office Action states that Fitzgerald does not disclose “a confidential subrecord that identifies a private company” nor “wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.” (Office Action, page 11). As discussed above with respect to independent claim 61, Kinker fails to cure this deficiency. First, Kinker discloses providing identifying information and secret information to a central computer. Second, Kinker teaches away from the proposed combination. Third, Fitzgerald itself teaches away from the proposed combination. Forth, the allegations of well-known fail to supply missing limitations. Last, the proposed modification would render Fitzgerald inoperable for its stated purpose.

In particular, neither Fitzgerald, Kinker nor what is alleged to be well-known, alone or in combination, teach or suggest “receiving **only** the exchange subrecord via a computer network communication link to the commercial statistical analysis system,” as recited in claim 88, as amended.

Accordingly, withdrawal of this rejection is respectfully requested. As claims 89-105, and 122 depend from claim 88, they are allowable for at least the same reasons.

#### Independent Claim 106

Claim 106, as amended, recites a system for trading commercial information via a network. The system comprising a commercial information exchange system including an exchange system controller and an exchange data storage system, wherein the commercial information exchange system is configured to receive an exchange subrecord from a user



location via a computer network, which is characterized by an absence of confidential identifying information for a private company, to update the exchange data set using the exchange subrecord, to generate a commercial statistical data set, and to transmit the commercial statistical data set to the user location via the computer network, and further wherein the exchange subrecord includes commercial information relating to a private company in an industry, and the statistical data set includes statistical averages for the industry, and wherein the commercial statistical data set is defined by a lack of information identifying a source of the exchange subrecord.

As discussed above with respect to independent claims, Fitzgerald, Kinker, or what is alleged to be well-known taken alone or in combination do not disclose, teach or suggest all the elements of claim 106. In particular, neither Fitzgerald, Kinker nor what is alleged to be well-known taken alone or in combination disclose teach or suggest “wherein the commercial statistical data set is defined by a lack of information identifying a source of the exchange subrecord,” as recited in claim 106. Moreover, as discussed above, Applicant submits that the combination of Fitzgerald and Kinker or the allegations of well-known is improper, and even if assumed proper does not teach or suggest the claimed invention. Furthermore, the proposed combination is taught away from by the explicit disclosures in Fitzgerald and Kinker, and even if assumed proper would render Fitzgerald unsuited for its intended purpose.

Accordingly, withdrawal of this rejection is respectfully requested. As claims 107-112 and 123 depend from claim 106, they are allowable for at least the same reasons.

### Independent Claim 113

Claim 113, as amended, recites a computer-readable medium having computer-executable instructions for performing a method for providing commercial statistical data via a network. The method comprising providing for collection of commercial data information via a webpage from a first user location, the commercial data information being associated with a private company in an industry, providing, at the first user location, for generation of a commercial data record from the commercial data information, including a confidential subrecord that identifies the private company and an exchange subrecord which is characterized by an absence of confidential identifying information for the private company, defining a commercial statistical analysis system having an exchange data set, receiving only the exchange

subrecord via a network communication link to the commercial statistical analysis system, updating the exchange data set using the exchange subrecord, generating a commercial statistical data set using the commercial statistical analysis system, wherein the commercial statistical data set includes statistical averages for the industry, and transmitting the commercial statistical data set from the commercial statistical analysis system to the user location, wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.

As discussed above with respect to independent claims, Fitzgerald, Kinker, or what is alleged to be well-known, taken alone or in combination do not disclose, teach or suggest all the elements of claim 113. In particular Fitzgerald, Kinker, and what is alleged to be well-known taken alone or in combination do not disclose, teach or suggest “receiving only the exchange subrecord via a network communication link to the commercial statistical analysis system,” as recited in claim 113, as amended. Moreover, as discussed above, Applicant submits that the combination of Fitzgerald and Kinker or the allegations of well-known is improper, and even if assumed proper does not teach or suggest the claimed invention. Furthermore, the proposed combination is taught away from by the explicit disclosures in Fitzgerald and Kinker, and even if assumed proper would render Fitzgerald unsuited for its intended purpose.

Accordingly, withdrawal of this rejection is respectfully requested. As claims 114-119 and 124 depend from claim 113, they are allowable for at least the same reasons.

#### Independent Claim 120

Claim 120, as amended, recites a method for trading private company statistical data. The method comprising providing for collection of private company data information including business valuation and other statistical data via a webpage, displayed on a computer system at a first user location, from a user associated with the private company, wherein the private company is part of a commercial industry, providing for generation of a private company data record from the private company data information, including a confidential subrecord, which includes confidential identifying information for the private company on a computer system at the first user location, and an exchange subrecord, which is defined by an absence of confidential identifying information for the private company, providing for storage of the confidential subrecord at the location of the user, defining, on a central computer system, a statistical analysis

system having an exchange data set and at least one statistical model, receiving only the exchange subrecord at the statistical analysis system over a computer network, updating, by a processor, the exchange data set using the exchange subrecord, storing the updated exchange data set to the statistical analysis system, generating a private company statistical data set using the statistical analysis system based upon the updated exchange data set and the at least one statistical model, wherein the private company statistical data set includes statistical averages for the commercial industry, the statistical averages including at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics, and average operating performance data; and transmitting, over the computer network, the private company statistical data set to one or more qualified users, wherein a qualified user is defined as a user who provides exchange subrecords to the statistical analysis system, and wherein the private company statistical data set is configured to protect an identity of the private company from other users with access to the private company statistical data set.

As the Examiner correctly noted, Fitzgerald does not disclose, teach or suggest “generating a private company data record from the private company data information, including a confidential subrecord” nor “wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.” Office Action, page 18. As discussed above with respect to the independent claims, Fitzgerald, Kinker or the allegations of well-known taken alone or in combination do not disclose, teach or suggest all the elements of claim 120. In particular Fitzgerald, Kinker or the allegations of well-known taken alone or in combination do not disclose, teach or suggest “receiving only the exchange subrecord at the statistical analysis system over a computer network,” as recited in claim 120, as amended. Moreover, as discussed above, Applicant submits that the combination of Fitzgerald and Kinker or the allegations of well-known is improper, and even if assumed proper does not teach or suggest the claimed invention. Furthermore, the proposed combination is taught away from by the explicit disclosures in Fitzgerald and Kinker, and even if assumed proper would render Fitzgerald unsuited for its intended purpose.

Accordingly, withdrawal of this rejection is respectfully requested. As claim 125 depends from claim 120, it is allowable for at least the same reasons

Allegations of Well-known: Claims 69, 71, 72, 92-93

Applicant respectfully disagrees with the Examiner's allegation of well-known. Applicant respectfully requests that the Examiner provide a reference teaching such knowledge or withdrawn the allegation of well known. (Please see MPEP §2144.03). Further Applicant respectfully submits that the Examiner's allegation of what is well-known is unrelated to the recited claim language and the reference cited does not teach what is alleged to be well-known.

For example, as stated in the Office Action, Fitzgerald does not disclose a "confidential subrecord," "the collected information," or the "confidential information," thus it is unclear how Fitzgerald could render obvious storage of something it does not disclose. With respect to Kinker, the cited portion of Kinker discloses storing a portion of secret data, it does not disclose storing "collected information," an "output data set," nor "the confidential data portion" at the first location, as is alleged.

### **CONCLUSION**

In view of the foregoing amendments and remarks, reconsideration is respectfully requested. This application should now be in condition for allowance; a notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,  
*G. Stephen LeGraw, Applicant*

By: /Matthew H. Grady/  
Matthew H. Grady, Reg. No. 52,957  
Matthew B. Lowrie, Reg. No. 38,228  
LOWRIE, LANDO & ANASTASI, LLP  
One Main Street  
Cambridge, Massachusetts 02142  
United States of America  
Telephone: 617-395-7000  
Facsimile: 617-395-7070

Docket No.: M2062-700010  
Date: January 28, 2009